

D-6

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 27, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 01HD-317
Hawai'i

Rescind Prior Board Action of March 22, 1996 (Item D-1), Direct Sale of a Perpetual, Non-Exclusive Easement to Douglas Hardy Knowlton and Patricia Ross Knowlton for access and utility purposes, Olaa Summer Lots, Puna, Hawai'i, Tax Map Key: 3rd/ 1-9-003: Kalaninauli Road.

BACKGROUND:

At its meeting of March 22, 1996, the Board of Land and Natural Resources, under Agenda Item D-1, approved the direct sale of a perpetual, non-exclusive easement to Douglas Hardy Knowlton and Patricia Ross Knowlton for access and utility purposes at Olaa Summer Lots, Puna, Hawaii, Tax Map Key: 3rd/ 1-9-03: Kalaninauli Road. Kalaninauli Road exists only as a "paper road". (Exhibit A)

On July 21, 1999, the Department of the Attorney General, at the request of the Chairperson, presented a legal interpretation of the definition of "Public Highway" under HRS 264-1(a). In brief, the Attorney General's Office concluded that, "a paper road which has been delineated or laid out on a subdivision map and originally created by either the State or a county, is a public highway, and in general, is owned by the county in which the highway lies. Thus, in most instances, the county, not DLNR has jurisdiction to dispose of the road." Due to the aforementioned, staff informed applicant of the State's position and submitted a rescind action for the May 24, 2002 Land Board Meeting, Item D-2. On May 21, 2002, via facsimile transmission, applicant requested a deferral on agenda Item D-2 to give him more time to research and investigate the State's decision of no longer having jurisdiction to grant his request for an easement. There has been no further correspondence from applicant. On March 15, 2007, applicant was sent a draft of Land Board submittal requesting approval of the recession and applicant was given until March 30, 2007 to submit any comments or objections. On March 28, 2007 applicant telephoned Hawaii district office to say he will not be responding in writing and had no objections to proceed with the recession.

On April 4, 1996, our Hawaii District Land Office received a check in the amount of \$1,000.00 reflecting the appraisal deposit as requested. Since the County of Hawaii and not DLNR has jurisdiction to dispose of the road, staff recommends the BLNR rescind its prior actions, allowing a full refund of the appraisal deposit back to Mr. and Mrs. Knowlton. In doing so, our files

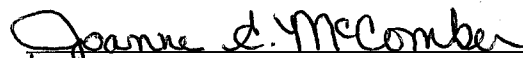
April 27, 2007

concerning this matter may be officially closed.

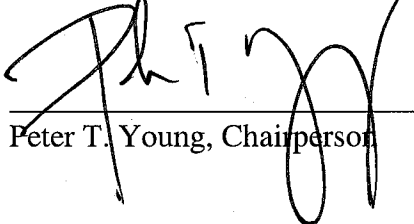
RECOMMENDATION: That the Board:

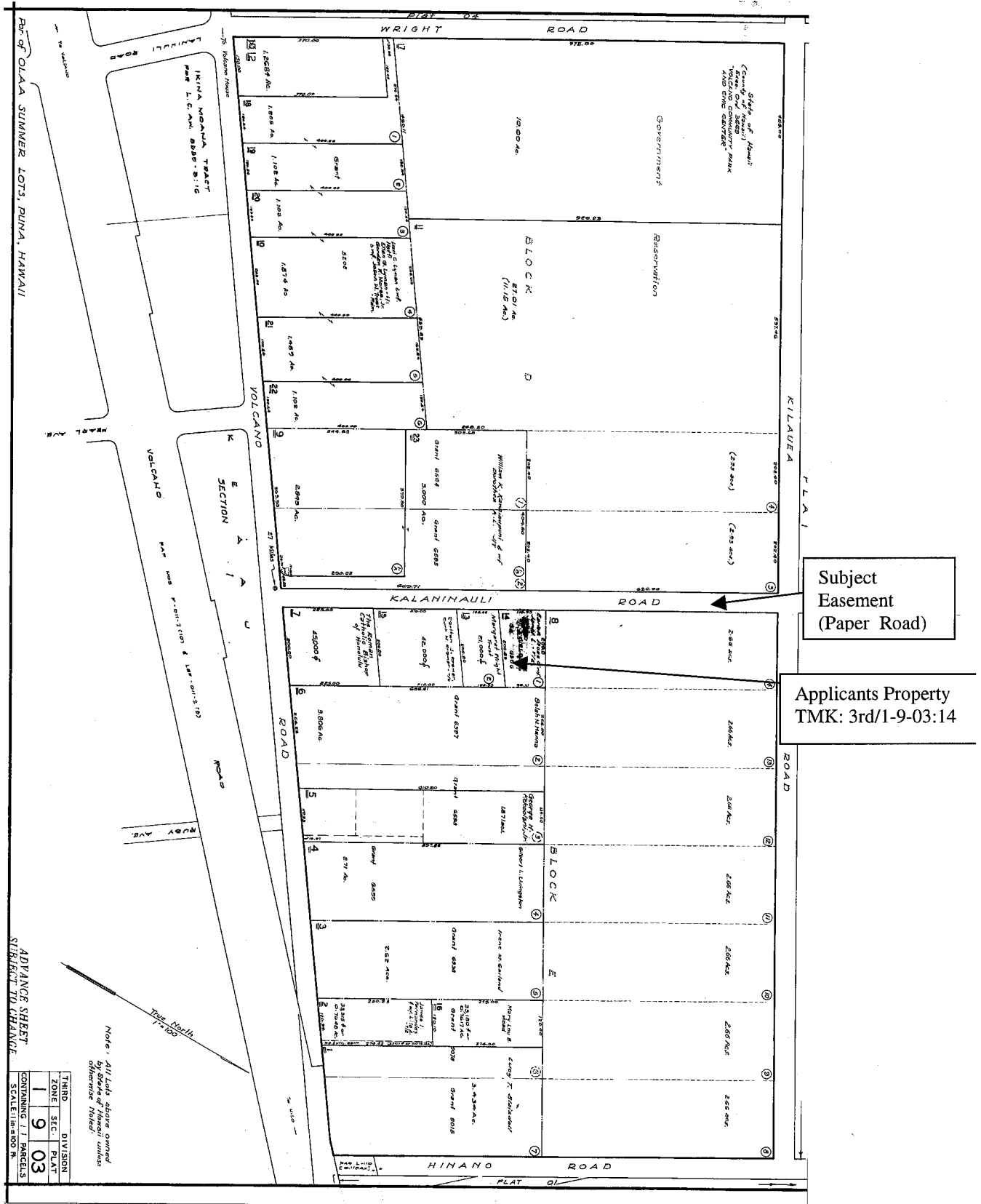
1. Rescind the prior Board action of March 22, 1996, under agenda item D-1, allowing for a full refund of the appraisal deposit back to applicant.

Respectfully Submitted,


Joanne E. McComber
Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson



BENJAMIN J. CAYETANO
GOVERNOR



RECEIVED
DIVISION OF
LAND MANAGEMENT
AUG 12 3 16 PM '99

EARL I. ANZAI
~~XEROX COPY~~
ATTORNEY GENERAL

THOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND/TRANSPORTATION DIVISION
ROOM 300, KEKUAŌAO'A BUILDING
465 SOUTH KING STREET
HONOLULU, HAWAII 96813

July 21, 1999

RECEIVED
JUL 22 11:56
STATE OF HAWAII
LAND AND NATURAL RESOURCES

The Honorable Timothy E. Johns
Chairperson of the Board of
Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Johns:

Re: Request for Legal Interpretation of the Definition of
"Public Highway" under HRS 264-1(a)

THE QUESTION

This is in response to your predecessor's May 6, 1998 memorandum asking whether the Board of Land and Natural Resources (BLNR) may sell an access easement over a "paper road."¹ To put it another way, the question is, does the BLNR own paper roads, pursuant to Hawaii Revised Statutes (HRS) § 264-2, so that it may dispose of said roads under § 171-13, HRS.

¹ For purposes of this opinion, the term "paper road" means a road which has been planned by the government for the purpose of providing access to a government created homestead lot, but does not actually exist on the ground. Often paper roads are shown on subdivision maps.

EXHIBIT "A"

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BRIEF ANSWER

In brief, we conclude that a paper road which has been delineated or laid out on a subdivision map and originally created by either the State or a county, is a public highway, and in general,² is owned by the county in which the highway lies. Thus, in most instances, the county, not BLNR has jurisdiction to dispose of the road.

BACKGROUND

The question of how to treat a paper road under § 264-1, HRS, has arisen from time to time when the BLNR has been asked to grant a property owner an easement over a paper road on public land for access to the property owner's lot. The matter generally arises in the context of a request by homestead subdivision lot owner for an access easement from the State over the paper road in order to qualify for financing for a residence. Financial institutions generally require a homestead lot to have access to a public highway before the applicant may qualify for a mortgage. Historically, the BLNR has granted to homestead lot owners easements for access purposes over these paper roads. This action makes sense only if a paper road is not a county "public highway" owned by the county and as such may be treated as unencumbered state land subject to conveyance by the BLNR.

An example of the problem arose recently on the island of Hawaii, where the government (State) created homestead lots on state public lands for leases and fee simple homestead ownership, pursuant to the Land Act of 1895 (Act). Section 212 of the Act authorized the Commission of Public Lands³ to survey and set

²We say "in general" because although the specific determination of whether a paper road is owned by the State or county will be factually based in each instance, almost all if not all homestead paper roads will be county public highways.

³The Commission of Public Lands is the predecessor to the Board of Land and Natural Resources. Act 32, 1962 Haw. Sess. Laws. 95.

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apart portions of public lands for homestead lots and roads. In many instances, the government subdivided and sold the lots but never constructed or built the planned roads that were intended to connect the lots to a public highway. The roads, however, were shown on subdivision maps created by the government.

In a memorandum dated June 8, 1992, we advised the Hawaii District Land Agent that such a paper road was not a "public highway" within the meaning of HRS § 264-1. We stated that in order for a road to be a public highway the road had to exist on the ground. Because of that conclusion, we further advised that paper roads on the public land in question should be treated as unencumbered state lands within the jurisdiction of the Department of Land and Natural Resources, rather than public highways subject to county jurisdiction. As such, the roadway lands could be disposed of by the State. ✓

For the reasons which follow, we reconsider the memorandum of June 8, 1992, and conclude that homestead paper roads are roads that have been "laid out" within the meaning of HRS § 264-1 and are thus "public highways." As to whether the specific public highway, (Kalaniauli Road, Olaa Summer Lots, Puna, Hawaii, TMK 3rd/1-9-03), is under the jurisdiction of the State or under the jurisdiction of the county, we find that the road is owned by the county and subject to its disposition, not the BLNR's. ✓

DISCUSSION

A. Definition of Public Highway.

Hawaii Revised Statutes § 264-1, defines "public highway" as follows:

(a) All roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government are declared to be public highways. [Emphasis added.]

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The definition of public highways under HRS § 264-1(a), is identical to the original definition of public highways found in the Highways Act of 1892. The terms "opened" and "built" in the statute are apt to describe a road that actually has been built and exists on the ground. The term "laid out," on the other hand, is more likely to describe a road that has not been built yet, but is intended to be built.

In order to ascertain the true meaning of a statute, we are generally guided by canons of statutory interpretation. "[T]he fundamental starting point is the language of the statute itself." Mathewson v. Aloha Airlines, Inc., 82 Haw. 57, 71, 919 P.2d 969, 983 (1995).

When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. (citation omitted). And fifth, in construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning. Moreover, the courts may resort to extrinsic aids in determining the legislative intent. (citation omitted).

Peterson v. Hawaii Elec. Light Co., Inc., 85 Haw. 322, 328, 944 P.2d 1265, 1271 (1997).

There is no statutory definition for the term "laid out." The term "lay out," however, is defined in ordinary terms as meaning "to plan in detail; to map out; to arrange as grounds or plans. (Webster's New International Dictionary, 2d ed., unabridged, 1950.)" In the Matter of Bishop Trust Co., Ltd., 40 Haw. 730, 732 (1955), reh'g denied, 41 Haw. 650 (1955).

In Bishop Trust, the Supreme Court of Hawaii, described the term "laid out," as meaning a road which is "delineated on a map or otherwise located and defined." Id., 40 Haw. at 732.

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Similarly, in Watson v. Greely, 69 Cal.App. 643, 232 P. 475 (CA 1924), the court distinguished roads that actually had been built or constructed from roads which had only been "laid out." In Watson, the definition of a "highway" under the relevant statute was as follows:

In all counties of this state public highways are roads, streets, alleys, lanes, courts, places, trails, and bridges, laid out or erected as such by the public, or if laid out or erected by others, dedicated or abandoned to the public[.]

Id., 69 Cal.App. at 649, 232 P. at 478. The court in distinguishing between the two types of highways made the following observation:

[T]he words 'laid out' do not in themselves imply the building or construction of a structure or other work. One about to build a house would not say that he intended to 'lay out' a house, much less would he say after it was built or completed that it had been 'laid out.' Nor would those words be the apt ones to use in expressing the idea of the building and completion of a levee or a canal or a ditch. Hence, it is only reasonable to assume that if the legislature, in defining highways, intended to say that only such ways as had roads upon them were county highways, it would not have used the phrase "laid out" as descriptive thereof, but would have said that those ways only are highways upon and over which roads have been built, and, naturally, would have employed more apposite words or phrases in defining the same.

Id., 69 Cal.App. at 649-50, 232 P. at 478.

One might read the statute to mean that in order for a road to be considered a public highway all three elements (opened, laid out, and built) must be satisfied. We do not agree with

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this reading. The terms used to describe a public highway in HRS § 264-1, are "opened, laid out, or built." [Emphasis added]. If the legislature, when it enacted HRS § 264-1(a), had intended that only highways which had actually been built could qualify as public highways, it would not have used the disjunctive "or" to set apart the three verbs listed in the definition of "public highway." Moreover, there would have been no point to using the term "laid out" in the statute if the term independently of the other verbs in the section did not by itself mean "public highway." If the statute intended to include only roads that had in fact been constructed by the government, the term "laid out" would be meaningless surplusage.

A cardinal rule of statutory construction is to give effect to all parts of a statute so that no clause, sentence, or word is rendered superfluous, void, or insignificant if a construction can be legitimately found which would give force to and preserve all words of the statute. State v. Ortiz, 74 Haw. 343, 351-52, 845 P.2d 547, 551-52 (1993), recon. denied, 74 Haw. 650, 849 P.2d 81 (1993). To use the terms "laid out" and "built" in the conjunctive would be redundant and would not give to "laid out" a separate meaning.

Based upon the above, we are of the view that a road such as the homestead paper road on the Big Island which has been delineated on a subdivision map created by the government, falls within the definition of "public highway" under HRS § 264-1(a), even though the road does not exist on the ground.⁴

⁴Attorney General Opinion No. 63-54 states that a "public highway" pursuant to § 142-1, Revised Laws of Hawaii 1955, which is the predecessor to § 264-1, HRS, "is a road or street actually constructed and existing on the ground. It does not refer to a mere 'paper' road or an unimproved way not open to the general public as a road." We are now of the view that the statement in AG Op. 63-54 is incorrect, but because the discussion on the status of paper roads was not relevant to the question posed in the opinion, the statement does not affect the conclusion reached in AG Op. 63-54, nor is the statement controlling precedent in the present analysis.

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B. Ownership and Disposition of Public Highways.

Public highways are of two types:

- (1) State highways, which are all those under the jurisdiction of the department of transportation; and
- (2) County highways, which are all other public highways.

Section 264-1(a), HRS, defines two types of public highways. The first consists of those public highways under the jurisdiction of the Department of Transportation (DOT). These the statute declares are state public highways. Section 264-1(a)(1), HRS. State public highways are more particularly described in chapter 264. Generally they are federal aid highways which run around the perimeter of each island. All other public highways are county public highways. Section 264-1(a)(2), HRS. The counties own in fee simple their respective county public highways by virtue of HRS § 264-2. In most, if not all cases a homestead paper road would not fall under the jurisdiction of DOT. Accordingly, it would be a county public highway.

CONCLUSION

In view of the conclusion we have reached in this opinion,

⁴(...continued)

The question raised in AG Op. No. 63-54 was whether the County of Hawaii could sell a state-established homestead paper road. The opinion concluded that a county could not because it did own the highway under § 142-2, RLH. Section 142-2, RLH, limited the ownership of county public highways to "only such highways acquired by the counties by eminent domain, purchase, dedication or surrender." Since the county had not acquired the paper 'road' through any of these means, the opinion rightly concluded that the county could not sell it. Act 221, 1965 Haw. Sess. Laws 338, amended § 142-2, to provide that by virtue of section 142-2, HRS, itself the county owns in fee simple all county public highways acquired by whatever means and may dispose of them in accordance with the laws.

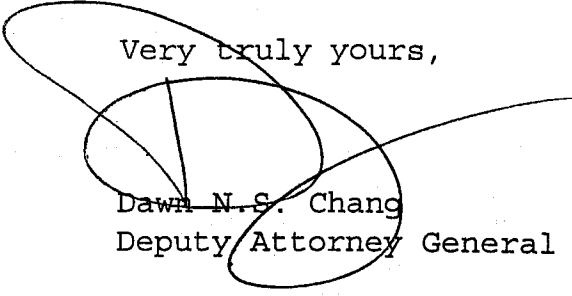
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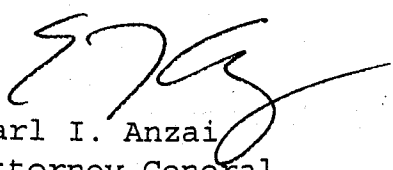
we advise that the BLNR should no longer grant easements over county public highways (which include paper roads) to homestead lots. Instead applicants should be referred to the county for appropriate action.

Very truly yours,



Dawn N.S. Chang
Deputy Attorney General

APPROVED:



Earl I. Anzai
Attorney General
5m10

R-555

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

MAY 08, 1992 / 10:00 AM

Doc No(s): 92-072288

/s/ S. FURUKAWA
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

AFTER RECORDATION, RETURN BY MAIL () PICK-UP (X)
Hawaiian Trust Company, Limited :
Real Estate Dept. : (DO NOT WRITE IN THIS SPACE)
Attn: Rachel Uehara :
:

TITLE OF DOCUMENT:

DEED

PARTIES TO DOCUMENT:

Grantor: HAWAIIAN TRUST COMPANY, LIMITED, Trustee hereinafter
stated

Grantee: DOUGLAS HARDY KNOWLTON and PATRICIA ROSS KNOWLTON

PROPERTY DESCRIPTION: : LIBER/PAGE/DOCUMENT NO.:
: 19870/485
SEE EXHIBIT "A" : DOCUMENT NO.:
: TRANSFER CERTIFICATE OF
: TITLE NO(S):

DEED

KNOW ALL MEN BY THESE PRESENTS:

That HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii
corporation, Trustee under unrecorded Revocable Living Trust
Agreement dated July 3, 1978, as amended, with powers to sell,
mortgage, lease, etc., hereinafter called the "Grantor", for and
in consideration of the sum of ONE DOLLAR (\$1.00) to Grantor paid
by DOUGLAS HARDY KNOWLTON and PATRICIA ROSS KNOWLTON, husband and
wife, whose address is 1179 Lunahana Place, Kailua, Hawaii
96734, hereinafter called the "Grantee", receipt whereof is

RUSH MOORE CRAVEN SUTTON MORRY & BEH
Attorneys At Law

EXHIBIT "B"

hereby acknowledged, does by these presents grant and convey the real property described in Exhibit "A" hereto attached and expressly made a part hereof, unto Grantee as TENANTS BY THE ENTIRETY with full rights of survivorship and not as tenants in common;

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto Grantee, absolutely and in fee simple.

And the Grantor for itself and its successors in trust hereby covenants with the Grantee that said property is free and clear of all encumbrances made or suffered by it, except as may be hereinabove set forth and as set forth in said Exhibit "A" and that it will warrant and defend the same unto the Grantee forever, against the lawful claims and demands of all persons claiming by, through or under the Grantor, except as aforesaid.

IT IS UNDERSTOOD that HAWAIIAN TRUST COMPANY, LIMITED, is executing this document solely in its capacity as Trustee as aforesaid, and is not assuming any personal liability in its corporate capacity.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, successors in trust, heirs, personal representatives and assigns, according to the context thereof.

IN WITNESS WHEREOF, the Grantor has executed these presents this _____ day of MAY - 1 1992, 19____.

HAWAIIAN TRUST COMPANY, LIMITED,
Trustee as aforesaid

by [Signature]
VICE PRESIDENT
by [Signature]
VICE PRESIDENT
JOAN C. BAUMGART

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU } ss.

On this _____ day of MAY - 1 1992, 19____, before me appeared JANIS L. KUROMOTO and JOAN C. BAUMGART to me personally known, who, being by me duly sworn, did say that they are the

VICE PRESIDENT and ASSISTANT VICE PRESIDENT, respectively, of HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii corporation, Trustee under unrecorded Revocable Living Trust Agreement dated July 3, 1978, as amended, with powers to sell, mortgage, lease, etc., and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said JANIS L. KUROMOTO and JOAN C. BAUMGART acknowledged said instrument to be the free act and deed of said corporation as such Trustee.

[Signature]
Notary Public, State of Hawaii.
My commission expires 9-15-93

EXHIBIT "A"

All of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 8596 to William D. Stone) situate, lying and being in Oahu, District of Columbia, Island and County of Hawaii, State of Hawaii, and thus bounded and described:

PARCEL 1: Beginning at the south corner of this piece of land and on the northeasterly side of Kalaninui Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KULANI" being 30,910.89 feet south and 24,986.86 feet east, and running by true azimuths measured clockwise from true South:

- | | | | |
|----|----------|--------|--|
| 1. | 149° 31' | 114.93 | feet along the northeasterly side of Kalaninui Road; |
| 2. | 239° 31' | 200.00 | feet along Lot 14, Block E of the Oloa Summer Lots; |
| 3. | 329° 31' | 95.91 | feet along Grant 6597 to George H. Vicars; |
| 4. | 54° 05' | 200.90 | feet to the point of beginning and containing an area of 21,084 square feet, more or less. |

BEING THE PREMISES DESCRIBED IN DEED

GRANTOR : JANET LEE ROSS, widow

GRANTEE : HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii Corporation; Trustee under unrecorded Revocable Living Trust Agreement dated July 3, 1978, as amended

DATED : June 19, 1986

RECORDED : Liber 19870 Page 485

END OF EXHIBIT "A"

Dwg. No. 2250
Source: Taxation Maps Bureau
By: N. Ahuja

**ADVANCE SHEET
SUBJECT TO CHANGE**

THIRD	DIVISION	
ZONE	SEC.	PLAT
1	9	03
CONTAINING / / PARCELS		
SCALE: 1 in. = 100 ft.		

PRINTED

REDUCED
NOT TO SCALE